

M.C. MONTHLY



The newsletter with a difference

May/June 2015

FALSE REPRESENTATIONS BY THE ESTATE AGENT IN THE SALE OF PROPERTY



All agents have to be very careful not to make false allegations about any aspect of the property being marketed.

The principle of non-misleading marketing is not only contained in the Estate Agency Affairs Board (EAAB's) code but also in the Consumer Protection Act (CPA).

Clause 5 of the EAAB Code provides that the estate agent is obliged

to communicate all relevant facts within his personal knowledge relating to a property to a prospective purchaser. The agent shall not intentionally or negligently make any false statements or misrepresentations to the purchaser or in any way wrongly influence the sale of a property. The agent could face disciplinary action by the Board should he or she contravene the code.

Section 29 and 41 of the Consumer Protection Act stipulates the general standard for the marketing of goods or services and that the agent may make no false, deceptive, ambiguous or fraudulent proposals, concerning any aspect of the contract, purchase price or property to the purchaser. The agent must communicate all known material facts to the purchaser.

The Consumer Commission may impose a fine of up to 10% of the annual turnover of the agency or a fine of up to R1 000 000 if it is found that the act has been contravened.

An even greater worry than either of the above is that the contract may be voidable or even void.

In the appeal court case of Sim Road Investments CC v Morgan Air Cargo (PTY) Limited, a real estate agent had falsely advertised the property as commercial property zoned for light industrial use, which was not true as it is an agricultural holding. The purchasers specifically sought to purchase property on which they could build storage and as a result it was very important that the property they were interested in purchasing possessed such rights.

The court ruled that there was no doubt that a fraudulent misrepresentation on the property was made. The exclusion clauses in the contract which had been drafted by the agent had no effect on the fraud that has occurred. This had the result that the purchaser was entitled to rescind the agreement for the purchase of the property.

The lesson to be learnt is that the agent must ascertain the correctness of the facts before making representations to the purchaser of a property. Sellers are not always correct in their statements. Thus it is advisable to obtain supporting documentation for example: to confirm that the property is zoned for a particular use as the seller claims.

We further advise that agents request the seller to complete the Immovable Property Inspection Report when the property is listed. The report records the condition of the property and ensures that a seller who makes false claims does not later blame the agent for such misrepresentation.

Written by/Geskryf deur: Sonja du Toit

M.C. VAN DER BERG^{INC}
ATTORNEYS, CONVEYANCERS & NOTARIES

Your Property Attorneys

BOEDELBEREDDERING VAN NIE-INWONERS MET SUID-AFRIKAANSE EIENDOM

Ons word dikwels gevra watter proses gevolg moet word wanneer die oorlede eienaar van 'n eiendom 'n nie-inwoner is. In terme van die Boedelwet 66 van 1965, sal 'n buitelandse eksekuteur slegs in staat wees om met bates in Suid Afrika te handel indien hy of sy gemagtig is deur die Meester van die Hooggeregshof.

Magtiging word verleen by wyse van 'n Suid Afrikaanse Eksekuteursbrief of "Brief van boedeltoekenning". Die administrasie proses vir boedels in Suid-Afrika is meer kompleks as die Europese "Brief van boedeltoekenning" bedeling.

Dit is belangrik om daarop te let dat in terme van Suid-Afrikaanse reg een van die volgende stel regsbeginsels van toepassing sal wees: of daar is 'n geldige testament waardeur die testateur sy wense bepaal: of daar is geen testament en sal die intestate erfreg van toepassing wees.

As 'n algemene reël, in die geval van intestate erfreg, is vaste eiendom onderworpe aan die wette waar die eiendom geleë is. Roerende goed word gereël deur die wette van die land waar die testateur gevestig is.

Die kruks van die saak is dat wanneer eiendom aangekoop word van 'n nie -inwoner bestorwe boedel, jy jouself sal moet gereed maak vir 'n langer as normale oordrag proses aangesien die bevestiging van die buitelandse eksekuteur deur die Suid-Afrikaanse Meesters kantoor volg op die buitelandse aanstelling en dit nie 'n vinnige proses is nie.



ADMINISTRATION OF ESTATES OF NON-RESIDENTS WITH SOUTH AFRICAN PROPERTY

We are often asked what process must be followed when the deceased owner of a property was a non-resident. In terms of the Administration of Estates Act No 66 of 1965 a foreign executor will only be able to deal with assets in South Africa once he or she is authorised by the Master of the High Court.

Authority can be granted by issuing South African Letters of Executorship or "resealing a foreign Grant of Probate". The administration process for estates in South Africa is more complex than for example the dispensation of the European Grant of Probate.

It is important to take note that in terms of South African law one of the following set of legal principles will be applicable. Either there is a valid Last Will and Testament whereby the testator dictated his wishes or if there is no Will the law of intestate succession will be applicable.

As a general rule, in case of intestacy, immovable property is governed by the laws where the property is situated. Movable property is governed by the laws of the domicile of the testator.

The bottom line is that when purchasing property from a non-resident deceased estate you will have to prepare yourself for a lengthy transfer process as the confirmation of the foreign executor by the South African masters office follows the finalisation of the foreign appointment and is not a speedy process.

Written by/Geskryf deur: Nicole Rokebrand

MCADemy TRAINING

Our training schedule for May and June at our MCademy Facility, based at: c/o Saxby & Frederik Streets, Eldoraigine, Centurion, is as set below: The training is free of charge and bookings must be made with **Liza Louw: MCademybookings@mcvdberg.co.za or contact her at 012 660 6109 to reserve your seat.**

CENTURION – THEME TRAINING 2015

7 May 09:00 – 11:00 ENG Compliance Certificates ("Nakomingsertifikate") c/o Saxby & Frederik Streets, Eldoraigine, Centurion.

MIDSTREAM – THEME TRAINING 2015

20 May 09:00 – 11:00 ENG Compliance Certificates ("Nakomingsertifikate") Kerksondermure, Midstream

PRETORIA EAST – THEME TRAINING 2015

13 May 09:00 – 11:00 ENG Compliance Certificates ("Nakomingsertifikate") Nedbank Menlyn Maine Auditorium

CENTURION – ROOKIE 1 TRAINING 2015

26-27 May 09:00 – 16:00 ENG Basic Rookie Training c/o Saxby & Frederik Streets, Eldoraigine, Centurion.

CENTURION – ROOKIE2RECRUIT TRAINING 2015

18 Jun 09:00 – 15:00 ENG Defects, CPA, Subject-To Transactions & Existing Lease Agreement c/o Saxby & Frederik Streets, Eldoraigine, Centurion.

CENTURION – ROOKIE3REALTORS TRAINING 2015

15 May 09:00 – 13:00 ENG Capital Gains Tax & Transfer Procedure c/o Saxby & Frederik Streets, Eldoraigine, Centurion.

25 Jun 09:00 – 13:00 ENG Capital Gains Tax & Transfer Procedure c/o Saxby & Frederik Streets, Eldoraigine, Centurion.

WATTER PROSES MOET GEVOLG WORD INDIEN DIE KOPER NALAAT OM BETYD'S 'N DEPOSITO TE BETAAL OF WAARBORGE TE LEWER?

Wanneer dit kom by die betaling van 'n deposito of lewering van waarborge om die koopprys te verseker, is dit baie belangrik om daarop te let dat die betaling van 'n deposito of die lewering van waarborge nie opskortende voorwaardes is nie, en dat die nie-voldoening daaraan nie die outomatiese verval van die koopkontrak tot gevolg sal hê nie.

Indien die koopkontrak dus bv. bepaal dat die koper voor of op 1 Mei 2015 'n deposito ten bedrae van R100 000.00 moet betaal, en hy laat na om dit te doen, sal die kontrak nie outomaties verval nie. In hierdie geval moet daar teruggeval word op die kontrakbreuk-klausule in die koopkontrak, en moet die koper in terme van sodanige klausule eerstens op terme geplaas word vir die betaling van die deposito.

Indien hy dan steeds, na afloop van die kennisgewingstydperk, nie die betaling gemaak het nie, kan die verkoper sy remedies in terme van sodanige klausule uitoefen, wat onder andere die kansellasië of die afdwinging van die koopkontrak, asook die moontlike eis van skadevergoeding, sal insluit.

Dieselfde proses sal vir die lewering van waarborge geld.



WHAT PROCESS NEEDS TO BE FOLLOWED WHEN THE PURCHASER NEGLECTS TO MAKE TIMEOUS PAYMENT OF A DEPOSIT OR TO DELIVER GUARANTEES?

When it comes to the payment of a deposit or securing the purchase price by delivery of guarantees it is very important to take note of the fact that the payment of a deposit or delivery of guarantees do not constitute suspensive conditions, and that non-compliance will not cause the sale agreement to automatically lapse.

Should the sale agreement for example state that the purchaser must pay a deposit in the amount of R100 000.00 on or before 1 May 2015, and he neglects to do so, the agreement will not lapse automatically. In such a case, one must fall back on the breach of contract clause in the sale agreement, and the purchaser must firstly be placed on terms for payment of the deposit.

If the payment has still not been made by the time the notice period lapses, the seller will have the right to exercise his remedies in terms of the breach clause, which will include the cancellation or enforcement of the sale agreement, as well as a possible claim for damages.

The same process will apply to the delivery of guarantees.

Written by/Geskryf deur: Annelé Odendaal

FREQUENTLY ASKED QUESTIONS? GEREELDE VRAE EN ANTWOORDE?

The bank requires that I must obtain life insurance for my bond, but I prefer to use my insurer of choice and not the bank's life insurance product. Will this be possible and what are the requirements of the bank?

Although each bank's requirements differ, the general requirements from all the major banks are that the client must furnish the bank with the complete life insurance policy, (for an amount not less than the amount that the loan will be registered for) which covers permanent disability, a noting letter which states that the banks

interest is noted by the insurance company, and a signed cession form wherein the policy is ceded to the bank.

Die bank vereis dat ek lewensversekering moet uitneem vir my verband, maar ek verkies om my versekering deur die versekeraar van my keuse te gebruik in stede van die bank se eie lewensversekeringsprodukt. Is dit toelaatbaar en wat is die vereistes van die bank?

Alhoewel elke bank se vereistes verskil, is die algemene vereistes van al die banke dat die kliënt die bank moet voorsien van die volledige polis (vir 'n bedrag nie minder as die bedrag waarvoor die lening geregistreer gaan word nie) wat permanente ongeskiktheid dek, 'n brief wat bevestig dat die belange van die bank genoteer word, en 'n getekende sessie vorm waarin die polis gesedeer word aan die bank.

Written by/Geskryf deur: Vernée Henning

TIAAN SÊ

Ek wil sommer 'n paar los gedagtes met julle almal deel. Ons het in die eerste kwartaal gratis opleiding aan meer as 'n 1500 agente by MCademy aangebied. Dit is vir ons 'n besondere voorreg om in hierdie mate betrokke te kan wees by die opleiding van agente.

Die meeste van julle het seker gehoor van die groot inbraak by ons kantore. Letterlik elke rekenaar is uit ons kantoor gesteel. Danksy ons goeie IT Maatskappy – AI Technologies was al ons data beskerm en het Jacques en Cyril en hul span letterlik binne minder as 'n week ons weer volstoom aan die gang gekry.

Na die wysiging aan die Hereregte aan die begin van Maart en die daaropvolgende wysiging van die foorielyste en die MCostcalculator, is die aktekantoorfooië ook gewysig met ingang 1 Mei 2015. Ons MCostcalculators en Foorielyste is weer opgedateer. Kontak ons gerus as jy nuwe foorielyste benodig.

Doen jouself 'n guns en gaan kyk hoe ons nuwe MCostcalculator werk. Dit is na my mening werklik een van die mees verbruikersvriendelike en goed uiteengesette kosterekenaars. Wat nou baie beter is, is dat die transport en die verbandkoste gekombineer word.

Dit is ook nou moontlik om vanaf beide die mobiele en webwerf die beraamde kostes aan 'n kliënt te epos.

Ons is in die proses om ons nuwe kontrak uit te rol. Kontak ons gerus as julle van ons standaard opgedateerde pro forma kontrak gebruik wil maak.

Tot volgende keer



WERKNEMER VAN DIE MAAND

Adelle du Plessis is werksaam by MC van der Berg Ing sedert 7 Januarie 2013. Sy is die administratiewe assistent vir Ronelle Horak. Hulle hanteer hoofsaaklik skemas maar doen ook gewone transporte.

Adelle is 'n toegewyde ma van 2 dogtertjies en 'n regterhand waarsonder Ronelle se stasie nie kan funksioneer nie.

RICH'S REVIEW:

In a crime-filled country like South Africa one tends to have an above average understanding of the crime portrayed in crime novels. Deon Meyer graced his readers with his latest novel, Icarus at the end of March. I read the original version in Afrikaans but believe an English version will be available soon.

Without giving away the plot of the story, I can divulge that the beloved police inspector Bennie Griessel remains the main character and faces a battle (mostly a losing battle) with his alcoholic tendencies nearly destroying his relationship with his girlfriend! The setting is the beautiful Stellenbosch wine region.

There are 2 story lines; the narrative of the progress made with the investigation and the second the story as told by the confessor, or so it seems. Meyer once again amazes with his easy to read fast paced story-telling.

This is an easy and enjoyable read, especially if you like a good crime novel!

Deon Meyer, Ikarus ISBN 9780798169776

WHAT OUR CLIENTS HAVE TO SAY / WAT ONS KLIËNTE SÊ

- * Dankie vir die baie professionele hantering van die oordragproses.
- * As for the service, I would give you a solid 5 out of 5, and would recommend you to any others wanting to use this kind of service.
- * Your levels of professionalism, and the speed of the transaction, is commendable.
- * Your service has been absolutely amazing, I have never had a matter so professionally and smoothly handled.
- * Been an absolute pleasure.
- * Soos altyd is dit net 'n plesier om van julle dienste gebruik te maak.
- * Baie dankie vir die terugvoering en uitstekende diens wat ek ontvang het.
- * Wees gerus dat ek in die toekoms definitief weer van julle dienste gebruik sal maak.

Looney Law

A new client had just come in to see a famous lawyer.

"Can you tell me how much you charge?", said the client.

"Of course", the lawyer replied, "I charge \$200 to answer three questions!"

"Well that's a bit steep, isn't it?"

"Yes it is", said the lawyer, "And what's your third question?"

Boereraat:

Oud, maar nie koud

'n Ysbakkie wat gekraak is en nie meer in die yskas gebruik kan word nie, is baie nuttig as houer vir klein skroefies, boute en spykers in die werkswinkel of motorhuis

ADVERTENSIE



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ETHICAL CODE

In terms of the estate agents' general duty to members of the public and other persons or bodies, an estate agent-

2.5 shall not through the medium of a company, close corporation or third party, or by using such company, close corporation or third party as a front or nominee do anything which would not be permissible for him to do if he were operating as an estate agent;

2.6 shall not deny equal services to any person for reasons of race, creed, sex, or country of national origin;

WHAT MAKES US UNIQUE?

For the past few years we have put a lot of time into training of estate agents and have found that it really has a positive impact on how they approach the legal aspects of their industry.

We realise, however, that the person on the street wants more information when they decide to market their property or start searching for a new home. Many questions, if asked and dealt with early in the process, could avoid delays and friction between parties later in the process.

With this in mind, we have launched a monthly information session to educate prospective sellers or purchasers. The evening is presented by Tiaan (M.C.) van der Berg and includes a presentation as well as a question and answer session. The event is free of charge to the public and we ask that you reserve your seat in advance.

Our next event is: 13 May 2015.

Kindly make your booking with Liza Louw: 012 660 6109 or mcademybookings@mcvdberg.co.za

If you are interested in attending, but this date is not suitable, please keep an eye on our website (www.mcvdberg.co.za) for future dates.

Written by/Geskryf deur: Tiaan (M.C.) van der Berg

SUDOKU

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